

November 27, 2019

Via Electronic Filing

Rosemary Chiavetta, Esquire
Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Docket No. C-2018-3005331
Kenneth James Arthurs v. Pennsylvania Electric Company
Initial Brief of Pennsylvania Electric Company

Dear Secretary Chiavetta:

Attached for filing is the Initial Brief of Respondent, Pennsylvania Electric Company (Penelec), in the above referenced proceeding.

A copy of the Initial Brief has been forwarded to Complainant's Counsel in the manner indicated on the attached Certificate of Service.

If there are any questions, please contact me.

Very truly yours,

Reger Rizzo & Darnall LLP



Margaret A. Morris

MAM/lam
Enclosure

cc: The Hon. Elizabeth Barnes, Pennsylvania Public Utility Commission [w/encl.]
John L. Munsch, Esquire, FirstEnergy Service Company [w/encl.]
David C. Serene, Esquire, The Serene Law Firm PLLC [w/encl.]

**Re: Docket No. C-2018-3005331
Kenneth James Arthurs v. Pennsylvania Electric
Initial Brief of Pennsylvania Electric Company**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon the person(s) listed below, in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant).

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Dated: November 27, 2019



Margaret A. Morris, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kenneth James Arthurs

v.

Pennsylvania Electric Company

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C-2018-3005331

**INITIAL BRIEF OF
PENNSYLVANIA ELECTRIC COMPANY**

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I. STATEMENT OF THE CASE

1. Introduction

This matter comes before the Commission as the Formal Complaint filed by Kenneth James Arthurs (Complainant or Mr. Arthurs) against Pennsylvania Electric Company (Penelec or Company) alleging there are “unexplained” charges on the commercial account of Wolfendales (Customer) and the Company is not providing “residential termination notices”. He requests a Commission payment arrangement (PAR) for the non-residential account balance which exceeds \$48,000.

In sharp contrast to the Complainant’s conflicting opinion testimony, Penelec, based on its business records, offered substantial evidence that the account was properly billed, residential notices are not applicable to a commercial establishment that holds a hotel license and the Public Utility Code (Code) does not authorize the Commission to direct a PAR for a non-residential customer. The Complainant has failed to carry his burden of proof establishing that Penelec violated any provision of the Code, 66 Pa.C.S. § 101 *et seq.* or any regulation, order or rule that the Commission has the authority to administer. For the reasons set forth below, the Formal Complaint should be dismissed in its entirety and the requested relief should be denied.

2. History of Proceeding

On October 12, 2018, Mr. Arthurs filed a Formal Complaint with the Commission against Penelec at Docket No. C-2018-3005331 as discussed above.

On December 18, 2018, Penelec filed its Answer, denying the material allegations. The Company specifically asserted that the proper termination notices were issued, the transferred balances reflected the set aside pre-petition dollars that became due and owing once the Bankruptcy Court dismissed, with prejudice, the Bankruptcy Petition and the Commission lacks jurisdiction to direct a PAR for a non-residential customer.

Several Hearing Notices were issued and cancelled due to the Complainant's health problems. On March 28, 2019, the Commission issued a Notice scheduling the matter for a telephonic hearing before the Honorable Elizabeth H. Barnes (Judge Barnes) on October 15, 2019. The evidentiary hearing took place as scheduled. The Customer was represented by David Serene, Esquire; the Complainant testified on behalf of the Customer. Margaret A. Morris, Esquire, represented the Company; Alison Walker testified on behalf of Penelec. Judge Barnes did not direct the filing of briefs. Tr. 77. However, should a party chose to file one, the due date for main briefs was November 27, 2019 and the due date for filing of reply briefs was December 17, 2019. Tr. 87.

II. LEGAL BURDEN

Section 701 of the Code provides that any person may complain, in writing, about any act or thing done or omitted to be done by a public utility in violation, or claimed violation, of any law which the Commission has the jurisdiction to administer, or of any regulation or order of the Commission. 66 Pa.C.S. § 701. As a matter of law, to establish a legally sufficient claim, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990).

As the party seeking affirmative relief from the Commission, the complainant in a formal complaint proceeding has the burden of proof. 66 Pa. C.S. § 332(a). The burden of proof is the "preponderance of the evidence" standard. *Suber v. Pennsylvania Comm'n on Crime and Delinquency*, 885 A. 2d 678, 682 (Pa. Cmwlt. 2005) (*Suber*); *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlt. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992) (*Lansberry*); *see also North American Coal Corp. v. Air Pollution Commission*, 279 A.2d 356 (Pa. Cmwlt. 1971). To establish a fact or claim by a preponderance of the evidence means to offer the greater weight of the evidence, or evidence that outweighs, or is more convincing than, by even the smallest amount, the probative value of the evidence presented by the other party. *See Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 48-49, 70 A.2d 854, 855 (1950).

The burden of proof is comprised of two distinct burdens: the burden of production and the burden of persuasion. *Hurley v. Hurley*, 2000 Pa. Super. 178, 754 A.2d 1283 (2000). The

burden of production, also called the burden of going forward with the evidence, determines which party must come forward with evidence to support a particular claim or defense. *Scott and Linda Moore v. National Fuel Gas Distribution*, Docket No. C-2014-2458555 (Initial Decision issued May 11, 2015) (*Moore*). The burden of production goes to the legal sufficiency of a party's claim or affirmative defense. *See Id.* It may shift between the parties during a hearing. A complainant may establish a *prima facie* case with circumstantial evidence. *See Milkie v. Pa. PUC*, 768 A.2d 1217, 1220 (Pa. Cmwlth. 2001) (*Milkie*). If a complainant introduces sufficient evidence to establish legal sufficiency of the claim, also called a *prima facie* case, the burden of production shifts to the utility to rebut the complainant's evidence. *See Moore*.

If the utility introduces evidence sufficient to balance the evidence introduced by the complainant, that is, evidence of co-equal value or weight, the complainant's burden of proof has not been satisfied and the burden of going forward with the evidence shifts back to the complainant, who must provide some additional evidence favorable to the complainant's claim. *See Milkie*, 768 A.2d at 1220.; *see also Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

Having produced sufficient evidence to establish legal sufficiency of a claim, the party with the burden of proof must also carry the burden of persuasion to be entitled to a favorable ruling. *See Moore*. While the burden of production may shift back and forth during a proceeding, the burden of persuasion never shifts; it always remains on a complainant as the party seeking affirmative relief from the Commission. *See Milkie*, 768 A.2d at 1220; *see also, Riedel v. County of Allegheny*, 633 A.2d 1325, 1328, n.11 (Pa. Cmwlth. 1993); *see also, Burleson*, 443 A.2d at 1375. It is entirely possible for a party to carry the burden of production but not be entitled to a favorable ruling because the party did not carry the burden of persuasion. *See Moore*. In determining whether a complainant has met the burden of persuasion, the fact-finder may engage in determinations of credibility, may accept or reject testimony of any witness in whole or in part, and may accept or reject inferences from the evidence. *See Moore*, citing *Suber*.

Adjudications by the Commission must be supported by substantial evidence in the record. 2 Pa. C.S. § 704; *Lansberry*, 578 A.2d at 602. Substantial evidence is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Consolidated Edison Company of New York v. National Labor Relations Board*, 305 U.S. 197, 229, 59 S. Ct. 206, 217. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super. 1961); *Murphy v. Comm. Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

Under these principles the Complainant, as the party seeking relief, has the burden of proof. *See, Feinstein, supra*. In this case, the Complainant has the burden of proving, by a preponderance of the evidence, that (1) Penelec is threatening termination without providing the “tenant termination notice,” Tr. 24; (2) the Customer is entitled to a Commission directed PAR for the undisputed delinquent Account balance, Tr. 30; and (3) the Company failed to provide an explanation for the “\$16,000 that was added to the September 2017 bill”. Tr. 29.

III. QUESTIONS PRESENTED

1. DOES THE CODE OR COMMISSION REGULATION REQUIRED PENELEC TO PROVIDE A “TENANT TERMINATION NOTICE” TO THE OCCUPANTS OF THE SERVICE LOCATION BEFORE TERMINATING SERVICE TO A NON-RESIDENTIAL CUSTOMER WITH A HOTEL LICENSE?

SUGGESTED ANSWER: No.

2. DOES THE CODE AUTHORIZE THE COMMISSION TO DIRECT A PAR FOR IS A NON-RESIDENTIAL CUSTOMER?

SUGGESTED ANSWER: No.

3. WAS THE NON-RESIDENTIAL ACCOUNT CORRECTLY BILLED?

SUGGESTED ANSWER: Yes.

IV. RECORD EVIDENCE

Judge Barnes also took judicial notice of the Complainant's other 2018 Formal Complaint, the Initial Decision of the Honorable Mary D. Long and the Final Order entered at Docket No. C-2018-3001476.

Customer's Evidence

In support of the Customer's position, the Complainant testified and offered 5 exhibits. Exhibits 1 and 2 were admitted without objection. Exhibits 3 and 5 were not admitted into the record. Exhibit 4 was admitted but Judge Barnes indicated she would determine what weight, if any, should be given to the unsigned leases for the second floor of the Service Location.

Complainant Exhibit Number - Description of Exhibit

1. Select 2017 bills for Wolfendales
2. Select 2018 bills for Wolfendales
4. Unsigned leases for second floor

Respondent's Evidence

Penelec sponsored the testimony of one witness, Alison Walker. Penelec introduced 18 exhibits, all of which were admitted into evidence.

Penelec Exhibit Number - Description of Exhibit

1. Contacts - Post-Petition Account No. 100120101975
2. Tariff Definitions, Rules and GSMD Rate Schedule
3. Post-Petition Account Statement for Account No. 100120101975
4. SOA for Pre-Petition Account No. 100001626371
5. SOA for Pre-Petition Account No. 100116275841
6. SOA for Pre-Petition Account No. 100118019023
7. Bankruptcy Court Order, May 5, 2017, dismissing Docket 15-70491-JAD
8. Monthly Bill dated 8/28/17
9. BCS Decision No. 2930457 Closed 3/14/12
10. BCS Decision No. 3470238 Closed 9/20/16
11. BCS Decision No. 3587975 Closed 4/17/18
12. Service Termination Notice, dated 10/9/18
13. Contacts: Pre-Petition Account No. 100001626371
14. Updated Post-Petition Account Statement for Account No. 100120101975
15. Updated Contacts - Post-Petition Account No. 100120101975

16. 2017 Monthly Bills Not Provided by Complainant
17. 2018 Monthly Bills Not Provided by Complainant
18. Business record of termination notices for 10/14/19 termination

V. ARGUMENT

The Service Location is a commercial property where the Complainant operates a bar/restaurant known as Wolfendales. Tr. 17. Service is provided to the Customer under the Company's rate schedule Rate GS-Medium, General Service Secondary Rate-Demand Metered. Penelec Exhibit 2; Tr. 66. Meter #5000121563 records the usage for the entire Service Location which includes a bar/restaurant on the first floor as well as ten (10) sleeping rooms, two (2) bathrooms and two (2) kitchens located on the two floors above the bar business. Penelec Exhibits 8, 9; Tr. 76. The Company has established three post-petition accounts as a result of Bankruptcy Petitions filed/amended since 2015. Penelec Exhibits 1, 3, 5, and 6; Tr. 60. The present Post-Petition Account was established effective March 4, 2016. Penelec Exhibits 1, 3; Tr. 60. The Post-Petition Account balance as of October 15, 2019 is \$48,362.22. Tr. 69.

Based on the record evidence, the Complainant has not made a *prima facie* case that (1) the Customer is entitled to a Commission PAR; (2) there are incorrect charges on the account; and (3) residential termination notices must be given to the occupants on the second floor above the bar/restaurant. The Complainant's unsubstantiated opinion testimony is insufficient to support such findings. A personal opinion, no matter how strongly held, does not constitute evidence. *Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987). Even a *pro se* complainant must provide relevant and necessary information. *Groch v. Unemployment Comp. Bd. of Review*, 472 A.2d 286 (Pa. Cmwlth. 1984); *Vann v. Unemployment Comp. Bd. of Review*, 494 A.2d 1081 (Pa. 1985). To the extent that the Commission finds a *prima facie* case has been presented, Penelec has introduced substantial evidence through its witnesses and admitted exhibits to rebut the Complainant's purely opinion testimony.

1. Termination Notice Requirement

The Complainant simply testified that the Company issued "commercial termination notices" for the Service Location but never included "the tenant termination notice". Tr. 24. He

never defined/explained the term “tenant termination notice” or provided any support for his position. He did submit three unsigned leases for three room rentals on the second floor of the Service Location. Complainant Exhibit 4; Tr. 20-22.

The record evidence reflects that this allegation is an untimely appeal of the 2012 Informal Complaint wherein the Commission’s Bureau of Consumer Services (BCS) found the Customer’s service did not fall under the guidelines of residential end use since the Customer has a hotel license for the ten sleeping rooms. BCS specifically found that Section 1521 of the Code,¹ Section 56.2 of Commission regulations,² and Penelec’s Commission-approved tariff exclude utility service provided to a hotel from the definition of “Residential Building.” Penelec Exhibit 2, 9; Tr. 69-71. The record evidence supports a finding that the Customer rents the sleeping rooms pursuant to a hotel license issued by the Pennsylvania Liquor Control Board. Tr. 31. That fact is not altered by the presentation of unsigned leases that contained provisions that the Complainant could not explain. Tr. 36-38. Furthermore, he testified that he had “signed copies of the lease” but provided no explanation why those documents were not submitted. Tr. 22. Complainant Exhibit 4 should be given no weight.

2. PAR Request

The Complainant requests a Commission PAR for the delinquent account of Wolfendales. Tr. 30. He proposed a pay back period of 97 months. Tr. 79. It is undisputed that the Customer is a commercial customer under the terms of Penelec’s retail electric tariff. Penelec Exhibit 2; Tr. 66. As a creature of legislation, the Commission possesses only the authority the State Legislature has specifically granted to it in the Code. Section 1405 of the Code specifically authorizes the Commission to direct a PAR for **an existing residential customer**. 66 Pa. C.S.A. § 1405. The Code defines a “customer” for purposes of a Commission PAR as: “[a] **natural person** in whose name a **residential service account** is listed and who is primarily responsible for payment of bills rendered for the service or any adult occupant whose name appears on the mortgage, deed or lease of the property for which the residential utility

¹ 66 Pa.C.S. § 1521 *et seq.*
² 52 Pa. Code § 56.2

service is requested.” 66 Pa. C.S.A. § 1403. The Customer is not a “natural person”. The Customer does not have a residential service account.

The Commission has also consistently held that a commercial customer taking public utility service does not fall within the protections offered by Commission regulations at 52 Pa. Code § 56.1 *et seq.* (pertaining to residential service). *See, Lebanon Valley Enterprises, Inc. v. Metropolitan Edison Co.*, Docket No. C-00015522 (Order entered October 15, 2002); *Kayla's Place Inc. v. Duquesne Light Co.*, Docket No. C-00981711 (Order entered May 24, 1999); *Kenny v. Duquesne Light Co.*, Docket No. C-00967789 (Order entered November 27, 1996); see also, 52 Pa. Code § 56.1.

The Commission lacks the statutory authority under the Code to direct a PAR for Wolfendale’s commercial account. The record evidence supports a denial of the request for the Commission to direct PAR.

3. Incorrect Charges

The Complainant testified that in September 2017, Penelec transferred \$16,000.00 to the Customer’s monthly bill “without explanation.” Tr. 29. Penelec witness Walker testified that the Bankruptcy Court, by Order dated May 5, 2018, dismissed the Bankruptcy Petition with prejudice. Penelec Exhibit 7; Tr. 75. As a result, Penelec transferred the dollars set aside in the three closed accounts. Penelec Exhibits 3, 4, 5, 6, 8; Tr. 74-76. The record evidence reflects that the Complainant was specifically advised by the Call Center on three separate occasions that as a result of the Bankruptcy Court’s dismissal, the three pre-petition account balances dollars were transferred to the active Account. Penelec Exhibit 1; Tr. 76. The monthly bill, dated August 26, 2017, reflected the three pre-petition balances under the payment and adjustment information on the lower right-hand side of the bill. Penelec Exhibit 8; Tr. 76. The first transferred balance under Account No. 100001626571 was in the amount of \$4,303.17. Penelec Exhibits 3, 4, 8; Tr. 41. The second transferred balance under Account No. 100116275641 was in the amount of \$12,855.39. Penelec Exhibits 3, 5, 8; Tr. 41. The third transferred balance under Account No. 1001801023 was in the amount of \$2,566.83. Penelec Exhibits 3, 6, 8; Tr. 41-42. The total

amount transferred was \$19,757.49. Penelec Exhibit 8; Tr. 45, 76. The record evidence supports the finding that the transferred charges were explained.

A public utility is entitled to full payment (at the currently approved tariff rate) for service provided to customers. *Scaccia v West Penn Power Co.*, 55 Pa.PUC 637 (1982); *Kea v Peoples Natural Gas Co.*, 60 Pa. PUC 215 (1985); *Mill v Pa. PUC*, 623 A.2d 1100 (Pa. Cmwlt. 1982). The record evidence supports a finding that the account was properly billed and Penelec explained in written and oral communication the amount and reason for the transferred balances. The Customer is legally responsible for the delinquent balance.

VI. STIPULATED FACTS³

1. At the hearing, the Complainant stipulated that all payments were properly posted to the Account. Penelec Exhibit 5 and 6; Tr. 39.

VII. PROPOSED FINDINGS OF FACT

1. Complainant operates a business known as Wolfendales. Tr. 17.
2. Wolfendales is a bar/restaurant. Tr. 17.
3. NCK, Inc. owns the bar/restaurant operating as Wolfendales. Tr. 19.
4. NCK, Inc. was issued liquor license #34796 from the Pennsylvania Liquor Control Board. Tr. 31.
5. NCK, Inc. was issued a Hotel 6 license from the Pennsylvania Liquor Control Board. Tr. 31.
6. Wolfendales is located on the first floor of the building located at 560 Philadelphia Street, Indiana, Pennsylvania (Service Location). Tr. 18.
7. The second floor of the Service Location contains four-bedrooms that are separately rented but the hallway, kitchen and bathroom on the second floor is shared. Tr. 19, 36.
8. The Service Location was sold in September 2018 to Mary Beth Akbay and Lenny Akbay. Tr. 23.
9. All payment submitted were properly posted and reflected on the monthly bill. Tr. 39.
10. The monthly bill, dated August 26, 2017, reflected the three pre-petition balances under the payment and adjustment information on the lower right-hand side of the bill. Penelec Exhibit 8; Tr. 76.
11. The first transferred balance under Account No. 100001626571 was in the amount of \$4,303.17. Penelec Exhibits 3, 4, 8; Tr. 41.

³ At the hearing, the parties stipulated four (4) facts.

12. Account No. 100001626571 was established September 7, 1994 and closed July 1, 2015. Tr. 74.
13. The second transferred balance under Account No. 100116275641 was in the amount of \$12,855.39. Penelec Exhibits 3, 5, 8; Tr. 41.
14. Account No. 100116275641 was established July 9, 2015 and closed February 11, 2016. Tr. 74.
15. The third transferred balance under Account No. 1001801023 was in the amount of \$2,566.83. Penelec Exhibits 3, 6, 8; Tr. 41-42.
16. Account No. 1001801023 was established February 12, 2016 and closed March 3, 2016. Tr. 75.
17. The total amount transferred was \$19,757.49. Penelec Exhibit 8; Tr. 45, 76.
18. Alison Walker is a business analyst in Penelec's Pennsylvania Compliance Department. Tr. 56.
19. The present Account, No. 100120101975, was established March 4, 2016. Tr. 60.
20. The present Account is the third post-petition account established as a result of the filing of three petitions in Bankruptcy Court. Tr. 61.
21. The Customer is billed under Rate Schedule GS-General Service Secondary Rate-Demand Metered. Exhibits 2, 8; Tr. 66.
22. The Service Location does not meet the tariffed definition of "residential service." Penelec Exhibit 2, Tr. 66-67.
23. Commission regulations define residential service as a commercial establishment if concurrent service is provided to a residential dwelling attached. The term does not include utility service to a hotel or motel. Tr. 68.
24. Wolfendales contains a bar/restaurant on the first floor and hotel sleeping rooms on the second floor. Tr. 67.
25. The hotel sleeping rooms do not meet the tariff definition for residential service. Penelec Exhibit 2; Tr. 68.
26. BCS Decision No. 2930457 denied the request for a Commission PAR finding the account was commercial service and residential end use does not apply since there is a hotel license for the rooms. Penelec Exhibit 9; Tr. 70.
27. The Bureau of Consumer Services did not issue a decision on the commercial account and effective dates of the pre-petition balances. Penelec Exhibit 10; Tr. 72.
28. BCS Decision No. 3587975 found Penelec, on August 4, 2017, properly transferred the set aside balances from Bankruptcy Docket 15-70491-JAD. Penelec Exhibit 11; Tr. 73.
29. The Complainant was advised of the transferred balances by the Contact Center on April 28, 2018, September 27, 2017 and September 19, 2017. Penelec Exhibit 1; Tr. 75-76.
30. The bill, dated August 26, 2017, listed the three pre-petition balances transferred to the active Account. Penelec Exhibit 8; Tr. 76.
31. The Account has been subject to termination as a result of non-payment. Penelec Exhibits 1, 12, 13, 18; Tr. 78.
32. The Company posted a 3-day notice, dated October 9, 2018, for non-payment of \$41,270.13 on or after October 15, 2018. Penelec Exhibit 12; Tr. 78.
33. The notice requirements under Chapter 56 regulations are not applicable to nonresidential service. Tr., 79.
34. The Complainant is seeking a PAR with a pay back period of 97 months. Tr. 79.

35. A 10-day notice, dated September 16, 2019, was mailed to the Service Location advising service was subject to termination for past due amount of \$3,094.20. Penelec Exhibits 1, 18.
36. A 3-day notice was posted on the front door of the Service Location on September 25, 2019 at 2:33 p.m. Penelec Exhibit 18; Tr. 80.
37. Service was cut at the pole on October 14, 2019. Penelec Exhibit 18; Tr. 49.
38. A post termination notice was posted on the front door of the Service Location on October 14, 2019. Penelec Exhibit 18, Tr. 80-81.

VIII. PROPOSED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of this proceeding. 66 Pa. C.S. §§102, 701, 1501.

2. As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proof. 66 Pa. C.S. §332(a).

3. A public utility is required to provide adequate, efficient, safe and reasonable service. 66 Pa.C.S. §§ 102 and 1501.

4. To satisfy his burden of proof, the Complainant must demonstrate that Penelec violated the Public Utility Code or a regulation or order of the Commission. 66 Pa. C.S. § 701. This must be shown by a preponderance of the evidence. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 PA PUC 196 (1990).

5. Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing, by even the smallest amount, than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. P.U.C.*, 578 A.2d 600, 602, alloc.den., 602 A.2d 863 (1992).

6. Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence, sometimes called the burden of persuasion, to rebut the evidence of the Complainant shifts to the utility. If the evidence presented by the utility is of co-equal weight, the Complainant has not satisfied the burden of proof. The Complainant now has to provide some additional evidence to rebut the evidence of the utility. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

7. While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking

affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa.Cmwlth. 2001).

8. Assertions, personal opinions or perceptions do not constitute evidence. *Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

9. Penelec's Commission-approved tariff has the force and effect of law and is binding on both the public utility and its customers. 66 Pa. C.S. § 1301; *DiSanto v. Dauphin Consolidated Water Supply Company*, 436 A.2d 197 (Pa. Super. 1981); *Brockway Glass Co. v. Pa. PUC*, 437 A.2d 1967, 1070 (Pa. Cmwlth. 1981).

10. Under Pennsylvania law, tariff provisions that have been properly submitted to and approved by the Commission are *prima facie* reasonable. *Zucker v. Pa. PUC*, 401 A.2d 1377 (Pa. Cmwlth. Ct. 1979), *Shenango Twp. Bd. of Supervisors v. Pa. PUC*, 686 A.2d 910, 914 (Pa. Cmwlth. Ct. 1996), *Kossman v. Pa. PUC*, 694 A.2d 1147, 1151 (Pa. Cmwlth. Ct. 1997). Therefore, a complainant seeking to evade the effect of an existing tariff provision carries a very heavy burden to prove that the facts and circumstances have changed so drastically as to render the application of the tariff provision unreasonable. *Id.*; *Brockway Glass*.

11. The notice provisions of Section 1521 *et seq.* of the Code are not applicable to a landlord ratepayer who operates pursuant to a hotel license. 66 Pa.C.S. § 1519 *et seq.*

12. The Complainant has failed to carry his burden of proof which establishes that Penelec violated the Public Utility Code or a regulation or order of the Commission. 66 Pa.C.S. §§ 701, 332.

13. A public utility is entitled to full payment for service provided to customers and all customers are obligated to pay for utility service provided to them. *Kea v. Peoples Natural Gas Co.*, 60 PA PUC 215 (1985); *Scaccia v. West Penn Power Co.*, 55 PA PUC 637 (1982).

14. The Commission lacks jurisdiction to direct a payment arrangement for a commercial customer where there is no residential end-use. 66 Pa. C.S. § 1405(a).

IX. PROPOSED ORDERING PARAGRAPHS

1. That the Formal Complaint filed by Kenneth James Arthurs against Pennsylvania Electric Company at Docket No. C-2018-3005331 is dismissed.

2. That the docket at C-2018-3005331 is marked closed.

X. CONCLUSION

Based on the record evidence, the Complainant has failed to carry his burden of proof that Penelec violated the Code, regulations, or orders of the Commission. The Formal Complaint should be dismissed in its entirety.

WHEREFORE, for the foregoing reasons, Pennsylvania Electric Company respectfully requests that this Honorable Court dismiss with prejudice the Formal Complaint of Kenneth James Arthurs filed on behalf of Wolfendales at Docket No. C-2018-3005331 in its entirety.

Respectfully submitted,



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